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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JARITA ANN WELLES,

Defendant and Appellant.

D060756

(Super. Ct. No. SCN277989)

APPEAL from a judgment of the Superior Court of San Diego County, Runston G. Maino, Judge. Affirmed.

A jury convicted Jarita Ann Welles of misdemeanor child abuse (Pen. Code,<sup>1</sup> § 273a, subd. (b)) and reckless driving resulting in injury (Veh. Code, § 23105, subd. (a)). The jury failed to reach a verdict on driving under the influence causing injury (Veh. Code, § 23153, subd. (a)). On the reckless driving count, the trial court suspended imposition of sentence and placed Welles on probation for four years, conditioned on her

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise indicated.

serving 365 days in jail. On the misdemeanor child abuse count, the court imposed a concurrent sentence of 180 days.

Welles appeals, contending the court abused its discretion by imposing a jail term of 365 days as a condition of probation instead of a lesser term. We affirm the judgment.

#### FACTUAL AND PROCEDURAL BACKGROUND

On December 5, 2009, Welles became upset with two of her daughters, 14-year-old J. and 15-year-old R., because their voices were too loud and because J. poured salt in R.'s juice as a joke. Welles yelled at J. and R. and told them she was going to take them to their father's house. J. and R. got in Welles's car. R. put her seatbelt on but J. did not.

Welles and her daughters were yelling and swearing at each other. Welles drove quickly out of the garage. Welles said, " 'I know you don't like it when I drive fast, so how is this?' " and then sped up the street.

As Welles drove, the radio was blasting and she swerved the car, leaving the lane a little bit each time. According to R., Welles swerved the car to scare J. and the more J. complained about Welles's driving, the more Welles swerved the car to intentionally scare J. J. believed Welles was trying to scare her because Welles knew it scared J. when Welles drove fast. J. said it felt like the car was on two wheels at times. Welles then drove even faster, at an estimated 80 miles per hour. R.'s body swayed back and forth with the turns and the swerves. J. swung to one side of the car when it went around turns, and she had to hold onto the door handle. Welles ignored R. and J. when they told her to slow down, and said, " 'It's not worth me being alive. It doesn't matter anymore.' "

While going around a turn, the car traveled onto the dirt portion of the road. Welles swerved to try and get out of the dirt and back onto the road. However, she turned too fast and the car flipped "several times," landing on its wheels.

When the car came to rest, R. discovered she was not "really injured," but she found Welles unconscious, buckled in the driver's seat with blood covering her face. J. was also unconscious, laying in the road with blood on the ground and in her hair. R. waited in the middle of the road for about three to five minutes before another motorist came upon the scene and called for assistance. Welles, J., and R. were taken to the hospital. R. had glass removed from her foot as she was barefoot when the collision occurred.

According to the investigating California Highway Patrol officer who arrived at the scene, there were no obstructions on the road, which was not wet.

J. sustained a broken clavicle and rib, a fractured skull and arm, and a crushed vertebra. She dislocated her arm and needed a skin graft for the top of her head. She lost the hearing in her right ear, and the right side of her face was paralyzed. She was put into a medically induced coma for five days and spent a month in the hospital. J. sustained short term memory loss. At the time of trial, J. had undergone eight surgeries. Screws were put into her arm to keep the bone in place. J. sustained scarring on her shoulder, leg, and head.

The social worker who interviewed Welles at the hospital testified at trial that Welles had little concern for her children, especially J., who was still in the hospital at

that time. When Welles came to visit J. in the hospital, she said, " 'See, this shows you what happens when you don't wear your seat belt.' "

After Welles was released from the hospital, she asked R. what happened, stating she did not remember the accident. When R. described the collision, Welles became upset and accused her of lying and exaggerating. Welles said she would not have been driving that fast if J. and R. had not acted the way they had the night of the accident. A few days later, Welles sent text messages to R., explaining inconsistently that the accident happened because she had seen a dog or a rock in the road, and tried to avoid them. She also claimed the roads were wet.

Welles admitted she had been drinking the night of the collision. At trial, an expert witness testified that Welles' blood-alcohol level at the hospital was around .07 or .08 percent and her blood-alcohol level at the time of the collision was likely around .08 or .09 percent.

At sentencing, the trial court stated the probation report reflected the court's concerns. It requested argument from counsel, noting the case was "right on the line" as to whether it warranted a prison term. Defense counsel stated he understood why the probation report recommended 365 days in local custody but asked the court to consider something "along the lines of 180 days." After hearing from both counsel and Welles herself, the court granted Welles probation for four years, conditioned on her serving 365 days in jail. It explained Welles still did not accept full responsibility for her actions. The court acknowledged that Welles disagreed with the 365-day condition, but stated it had seriously considered sentencing her to prison, which "would have been two years."

## DISCUSSION

### I. *Standard of Review*

A trial court has broad discretion to impose conditions of probation to foster rehabilitation and protect public safety. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.) "Probation is a privilege, not a right [citation], and '[t]he sentencing court has broad discretion to determine whether an eligible defendant is suitable for probation and, if so, under what conditions.' " (*People v. Thurman* (2005) 125 Cal.App.4th 1453, 1459.) This discretion is limited only by the requirement that each condition must serve a purpose specified in section 1203.1. (*People v. Carbajal*, at p. 1121.) This section allows the court to condition a grant of probation on sentencing the defendant to jail "for a period not exceeding the maximum time fixed by law in the case." (§ 1203.1, subd. (a).)

We review the court's order imposing a 365-day jail term for abuse of discretion. In this regard, we determine whether the condition is arbitrary or capricious or, whether the condition exceeds all bounds of reason, all of the circumstances being considered. (*People v. Anderson* (2010) 50 Cal.4th 19, 31; *People v. Carbajal*, *supra*, 10 Cal.4th at p. 1121; *People v. Welch* (1993) 5 Cal.4th 228, 233.)

### II. *The Court Did Not Abuse its Discretion in Imposing a Condition of 365 Days in Jail*

Welles contends the court abused its discretion by imposing 365 days in jail as a condition of her probation, claiming a shorter term should have been imposed. Specifically, she points out she has no prior record, which was reflected in the probation report as a mitigating circumstance. Although she admits her behavior was

"inappropriate and dangerous," she maintains the incident was an accident and not an intentional assaultive act. She argues the probation report does not explain why 365 days, as opposed to a lesser time period, is needed for punishment and rehabilitation purposes. As we explain, we perceive no abuse of discretion.

Welles's 365-day jail term is well below the maximum amount permitted by law. (Pen. Code, § 1203.1, subd. (a).) She was convicted under Vehicle Code section 23105, subdivision a, which states, in part, "A person convicted of reckless driving in violation of [Vehicle Code] Section 23103 that proximately causes one or more of the injuries specified in subdivision (b) to a person other than the driver, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment in a county jail for not less than 30 days nor more than six months, or by a fine of not less than two hundred twenty dollars (\$220) nor more than one thousand dollars (\$1,000), or by both that fine and imprisonment." (Veh. Code, § 23105, subd. (a).) Penal Code section 1170, subdivision (h) contains different sentencing scenarios depending on the underlying offense, including paragraph (1), which reads, in part, "Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years." (Pen. Code, § 1170, subd. (h)(1).) The maximum time Welles could have served for this offense was three years, which is reflected in the probation report. Because 365 days is less than the maximum allowed by law, the condition did not contravene Penal Code section 1203.1, subdivision (a).

Although the probation condition did not exceed the maximum permitted by law, Welles argues for the reasons she enumerated above that the court should have imposed a jail term less than 365 days. Counsel for Welles argued at sentencing for a condition of jail time of around 180 days. However, the record amply supports the court's determination that a 365-day jail term was appropriate under the present circumstances.

The trial court observed that, even at the time of sentencing Welles did not fully accept responsibility for her actions. Instead, Welles attempted to blame the accident on objects in the road or road conditions, as well as her daughters' behavior. Even on appeal, Welles continues to characterize the incident as an "accident." But it was Welles's disregard for safety, her fast, reckless driving while intoxicated, and her deliberate swerving, done specifically to frighten her child, that caused her vehicle to overturn. Welles's anger towards J. and R. manifested itself in high speeds and reckless driving. Welles demonstrated a lack of remorse for her actions when she visited J. in the hospital and said, " 'See, this shows you what happens when you don't wear your seat belt.' " This lack of remorse continued when she sent her daughters a message after they testified against her at trial, stating she disowned them. J.'s injuries were numerous and extensive, many of which will continue to cause her future problems. As the probation report noted, J. was permanently "jailed in a broken body."

We conclude that under these circumstances, the trial court would have had discretion to sentence Welles to the two-year prison term it contemplated imposing. Therefore, the grant of probation with the condition that Welles serve 365 days in jail was not arbitrary, capricious, or beyond all bounds of reason under all of the circumstances.

(*People v. Anderson, supra*, 50 Cal.4th at p. 31; *People v. Carbajal, supra*, 10 Cal.4th at p. 1121; *People v. Welch, supra*, 5 Cal.4th at p. 233.)

DISPOSITION

The judgment is affirmed.

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O'ROURKE, J.

WE CONCUR:

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BENKE, Acting P. J.

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NARES, J.